



STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

DECISION

██████████ Respondent

Case #: FOF - 158760

Pursuant to a petition filed January 17, 2014, under Wis. Admin. Code §HA 3.03, and see, 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ from receiving FoodShare benefits for a period of ten years, a hearing was held on August 21, 2014, at Milwaukee, Wisconsin.

NOTE: The record was held open to allow OIG to supplement the record with a copy of an e-mail between Jill ██████████, a financial analyst with Hennepin County, Minnesota and Ms. Ryan containing a screen shot of a Food Support Issuance spread sheet. It has been marked as Exhibit 11. The record was also held open to give OIG an opportunity to submit a copy of the PARIS match print out. It has been marked as Exhibit 12 and entered into the record.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

Respondent:

██████████
██████████
██████████

█

ADMINISTRATIVE LAW JUDGE:

Mayumi Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent's CARES number is [REDACTED]
2. On May 26, 2012, the Respondent completed an on-line Six Month Report Form, indicating that he lived in Milwaukee on [REDACTED] (Exhibit 3)
3. On January 8, 2013, the Respondent completed an ACCESS renewal and indicated that he lived on [REDACTED] in Milwaukee. (Exhibit 4)
4. The Respondent received FoodShare benefits in Wisconsin from June 2012 to April 30, 2013. (Exhibit 8)
5. On July 9, 2014, Ms. Ryan sent an e-mail to Ms. [REDACTED] with the Respondent's social security number, requesting documentation showing that he received benefits in Minnesota. (Exhibit 11)
6. Ms. [REDACTED] responded with a Food Support Issuance printout for a person with Respondent's name showing that the person received food stamp benefits in Minnesota between from at least November 2012 through April 11, 2013. (Exhibit 11)
7. On July 17, 2014, the Office of Inspector General (OIG) prepared an Administrative Disqualification Hearing Notice alleging that the respondent lied about his residence in order to receive duplicate benefits between January 8, 2013 to April 30, 2013. (Exhibit 1)
8. The Administrative Disqualification Hearing notice was returned to OIG with no forwarding address. (Statement of Ms. Ryan)

DISCUSSION

Respondent's Non-appearance

The Respondent did not appear for this hearing. This circumstance is governed by the regulation in 7 C.F.R. §273.16(e)(4), which states in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. *Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence.* If the household member is found to have committed an intentional program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct a new hearing. In instances where the good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, *the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.*

Emphasis added

The hearing in this case took place on August 21, 2014. Megan Ryan, an Interstate Fraud Agent for the Office of Inspector General, indicated that the notice, which was mailed on July 17, 2014, to 6417 North 35th Street in

Milwaukee, was returned to the Office of Inspector General and that it is their protocol to do nothing to secure a current and accurate address, if no forwarding address is provided on the returned mail.

It has been stated that the Office of Inspector General is under no obligation to exercise any due diligence to secure a current and accurate address for a respondent when they receive returned mail. This is apparently so, even though 1) there is information that the Respondent may be residing in another state and 2) the Department of Health Services has a number of resources available to them, such as a data exchanges with or contact information for the Social Security Administration, the Internal Revenue Service/Department of Treasury, the Department of Workforce Development, Child Support Enforcement, Google, White Pages and contact information for the food stamp agency in the foreign state.

This certainly gives rise to the very serious question of whether this is a due process violation. However, 7 C.F.R. §273.16(e)(3) states the following:

Advance notice of hearing (i) The State agency shall provide written notice to the individual suspected of committing an intentional Program violation at least 30 days in advance of the date a disqualification hearing initiated by the State agency has been scheduled. If mailed, the notice shall be sent either first class mail or certified mail-return receipt requested. The notice may also be provided by any other reliable method. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held.

Emphasis added

The DHA file had a number of (262) 323-1184 for the Respondent, which is apparently the number listed in the Cares Worker Web Case Summary. However, this number was for a voice mail box belonging to “[REDACTED]”. A voicemail was left for the Respondent advising him about the hearing and that he had ten days to provide good cause for his failure to be available for the hearing. The Respondent did not contact the administrative law judge and did not submit anything within 10 days of the hearing date. As such, it is found that the Respondent did not have good cause for his non-appearance.

The Merits of OIG’s Claim

An IPV is defined at 7 C.F.R. §273.16(c) as intentionally: making a false or misleading statement or misrepresenting; concealing or withholding facts; or committing any act that constitutes a violation of the Food Stamp Act, federal regulations or any Wisconsin statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons or an authorization to participate (ATP) card.

The Department’s written policy restates federal law, below:

3.14.1 IPV Disqualification

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

FoodShare Wisconsin Handbook, §3.14.1.

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

In order for the agency to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence" used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases. It is used in civil cases where a higher standard is required because the outcome could result in

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that "yes" should be the answer because of its greater weight and clear convincing power. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the "middle burden." The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that "it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable." 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt that the opposite is true.

In the case at hand, the Office of the Inspector General (OIG) asserts that the Respondent violated the rules of the FoodShare Program by lying about his residence.

Per 7 C.F.R. §273.16(b)(5), “an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.” *See also FoodShare Wisconsin Handbook, § 3.14.12*

Specifically, OIG asserts that Mr. [REDACTED] either lied to Minnesota or he lied to Wisconsin about his residence, because he received benefits in both states between January and April 2013.

The January 2013 ACCESS renewal (Exhibit 4) is reliable evidence as a regularly kept business record of the State of Wisconsin and is sufficient to establish that the Respondent reported that he was living in Wisconsin. The CARES Worker Web Confirmed Assistance Group Eligibility History printout is also reliable as a regularly kept business record of the State of Wisconsin, and is sufficient to establish that the Respondent received FoodShare benefits in Wisconsin between January and April 2013.

The Food Support Issuance printout (Exhibit 11) is reliable as a regularly kept business record of the State of Minnesota and is sufficient to establish that a person with the Respondent’s name received Food Stamp benefits between January and April 2013. Given that Ms. Ryan’s e-mail to Ms. [REDACTED] in Minnesota requested information for the Respondent under his social security number, it is reasonable, in the absence of any objection, to conclude that the individual receiving benefits in Minnesota and the Respondent are one in the same person. (See again, Exhibit 11)

In order to receive benefit in Minnesota, the Respondent would have had to have told Minnesota that he lived there, because pursuant to 7 C.F.R. §273.3, “ a household shall live in the State in which it files an application for participation” in the food stamp program. Thus, the Respondent either lied to Wisconsin or lied to Minnesota in order to receive benefits in both states.

There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See John F. Jelke Co. v. Beck, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. There is nothing in the record to rebut the presumption that the Respondent intentionally provided false information about his residence in order to receive duplicate benefits.

According it is found that OIG has met its burden to prove by clear and convincing evidence that the Respondent committed an intentional program violation, as described in 7 C.F.R. §273.16(b)(5) by providing false information about his residence in order to receive duplicate benefits.

CONCLUSIONS OF LAW

The Respondent committed an intentional program violation by providing false information about his residence in order to receive duplicate benefits.

NOW, THEREFORE, it is

ORDERED

That the IPV that was the subject of this hearing is sustained and Respondent is hereby ineligible to participate in the FoodShare program for a period of ten (10) years, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

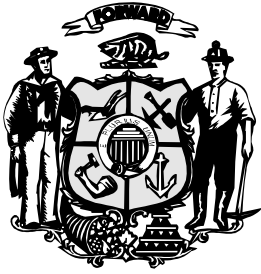
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of September, 2014.

\sMayumi Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: Office of the Inspector General - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Megan Ryan - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 12, 2014.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
megan.ryan@wisconsin.gov